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IN THE

Supreme Court of the United States

NORMA MCCORVEY, formerly known as Jane Doe,
Petitioner,

v.

WILLIAM "BILL" HILL, Dallas County, District Attorney
as successor in office to HENRY WADE,
Respondent.

On Petition for a Writ of *Certiorari* to the United States Supreme Court

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BRIEF OF *AMICI CURIAE*, ADVOCATES INTERNATIONAL AND ADVOCATES LATIN AMERICA IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici have come to know that this honorable Court is considering granting *certiorari* to Petitioner Norma McCorvey, and they wish to bring to the attention of the Court the following elements from international and domestic law in the Americas.

ARGUMENT

Amici are under the conviction that the Latin American context is analogous and pertinent to be considered in the United States. The countries of Latin America are part of the same hemisphere, and Hispanics make up the largest minority group in the United States. Furthermore, the cultural, educational, commercial and industrial exchanges among the United States and the countries of Latin America are continuously growing. Above all, we share the same humanity and the same commitment to promote a peaceful world, where the life of every person is acknowledged and defended from abuse or violent death.

I. INTERNATIONAL LAW

Amici would like the honorable members of this Court to carefully consider the words of Article 4 (1) of the American Convention on Human Rights (hereinafter "American Convention,") which states:

> **Article 4. Right to Life**
>
> 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

As manifested from the wording of this paragraph, international law in the Americas clearly recognizes the right to life of human beings from the moment of conception. This is one of the provisions of the American Convention that cannot

be suspended under any circumstances, not even under state of emergency, as stated in Article 27:

> **Article 27. Suspension of Guarantees**
>
> The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or the judicial guarantees essential for the protection of such rights.

The countries that are currently bound by the American Convention are the following: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico[1], Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

Considering the way in which this treaty protects human life from conception, the legislative bodies of all Latin American countries, except for Cuba, have decided not to legalize the practice of abortion.

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[1] Mexico is the **only** State Party to the Convention that has formally reserved Article 4, paragraph 1, declaring unilaterally that "the Government of Mexico considers that the expression 'in general' used in that paragraph does not constitute an obligation to adopt, or keep in force, legislation to protect life 'from the moment of conception,' since this matter falls within the domain reserved to the States." This among several other reservations made by the Government of Mexico was made at the time of ratification of the American Human Rights Convention. Retrieved from http://www.oas.org/juridico/english/Sigs/b-32.html on February 14, 2005.

Nonetheless, much still needs to be done. The problem of abortion does not end with making it illegal. All the nations of the world need to consider the real reasons women contemplate having abortions and respond to their needs in a legitimate way. This would include allowing better access to information about safe contraceptive methods, providing educational and career opportunities, and making adoption a readily available possibility.

Allowing mothers to kill their unborn children harms the mother emotionally, psychologically and physically, and it undermines the basic principle of respect for human life. Women, especially disadvantaged women, need real solutions to problems that do not include allowing them to kill their unborn children. They need to be empowered to decide for themselves the goals for their lives, without having to sacrifice the precious life of an innocent unborn baby.

II. DOMESTIC LAWS

In every country of Latin America, except for Cuba, abortion is forbidden by criminal law. The only exception is when the life of the mother is at risk. This type of abortion is known in Latin America as therapeutic abortion, and it is recognized in many countries.

It is also worth considering that Costa Rica's Constitutional Chamber of the Supreme Court issued a landmark ruling in the year 2000, finding that "the human embryo is a person from the moment of conception ... not an object, (. . .)" so that this life must be protected by the law from conception.[2] This decision is strictly in accordance with international human rights law in the Americas, as well as with domestic law in Costa Rica and many other countries in the region.

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[2] Sentence of the Constitutional Chamber of the Supreme Court of Costa Rica, No. 2000-02306, March 15, 2000.

Several Civil Codes of Latin American countries recognize not only the right to life of the unborn, but also the right to be benefited by all that may be in their favor. Here are just a few examples:

> Titles III and IV of The Civil Code of the Republic of Argentina describe the rights and protection recognized to the unborn. Article 63 states that the fetus conceived in the mother's womb is a person to be born and therefore has rights.[3]
>
> Article 2 of the Civil Code of the Republic of Bolivia declares that the unborn are considered as if they were born for everything that is in their favor.[4]
>
> Similarly, Article 75 of the Civil Code of the Republic of Chile[5] and Article 61 of the Civil Code of the

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[3] First Book of Persons, First Section of Persons in General. Title III. Regarding Not-yet-born Persons. Article 63. Not-yet-born persons are those who, having not yet been born, are conceived in the mother's womb. Civil Code of the Republic of Argentina. Retrieved from http://www.justiniano.com/codigos_juridicos/codigo_civil/libro1_secc1_titulo1al5.htm on February 14, 2005.

[4] First Book. Title I. Regarding Individual Persons. Chapter I. Regarding the beginning and the end of legal capacity. Article 1. Beginning of Legal Capacity. I. Birth designates the beginning of legal capacity. II. For him/her who is to be born he/she is considered born for anything that may favor him/her and being born alive is sufficient to be considered a person. Civil Code of the Republic of Bolivia, in force since April the 2nd, 1976. Retrieved from http://www.cajpe.org.pe/InformacionJuridica01.htm on February 14, 2005.

[5] First Book. Title II. Regarding the Beginning and the End of a Person's Existence. 1. Regarding the beginning of a person's existence. Article 75.—The Law protects the life of him/her who is to be born. Therefore, at the request of any person or *ex officio*, the Judge will take all measures that he/she considers necessary to protect the existence of the unborn, as long as he/she considers it to be endangered. Any punishment to the mother, for which the life or health of the child that she has in her womb could be endangered, will be delayed until the child's birth. Civil

Republic of Ecuador emphatically state that law protects the life of the unborn.[6]

A similar provision has Constitutional authority in the Republic of Peru, where the unborn are considered subjects under the law and, therefore, have rights "for all that is in their favor."[7]

Consistently with this Constitutional provision, the Civil Code of the Republic of Peru states that "the human person is a subject before the law since its birth. Human life begins at the moment of conception. The conceived is a subject before the law in everything that is in its favor. The attribution of patrimonial rights is under the condition of being born alive."[8]

Code of the Republic of Chile. Retrieved from http://www.cajpe.org.pe/Informacion Juridica01.htm on February 14, 2005.

[6] Title II. Regarding the Beginning and the End of a Person's Existence. Article 61.- The Law protects life of he/she who is to be born. Therefore, at the request of any person or *ex officio*, the Judge will take all measures that he/she considers necessary to protect the existence of the unborn, as long as he/she considers it endangered. Codification No. 000. RO/ Sup. 104, November the 20th, 1970.

[7] Article 2.—All persons have the right to: 1. Life, his/her identity, emotional, psychological and physical integrity, and to his/her free development and well-being. The conceived one is a subject under the Law in everything that favors him/her. Constitution of Peru, 1993.

[8] Title I. Beginning of the person. Article 1.—Subject Under the Law. The human being is subject under the Law from the time of his/her birth. Human life begins at conception. The conceived one is subject under the Law in everything that favors him/her. Economic rights are attributed on the condition of being born alive. Civil Code of the Republic of Peru. Legislative Decree No. 295, in force since November the 14th, 1984.

In the same vein, Article 17 of the Venezuelan Civil Code states that fetuses must be considered as if they were born for everything that is for their good.[9]

In Costa Rica, Article 31 of the Civil Code protects the right to life and juridical personality of fetuses since 300 days before their birth.[10]

SUMMARY

In the name of justice and equity, *amici* most respectfully request that this honorable Court grant *certiorari* to Ms. Norma McCorvey. The importance of this is most relevant not only to the United States but beyond its borders, since it will provide a great opportunity to reconsider the new and more compelling facts that are known today and that show that abortion, far from being a private and painless solution to a short term crisis, is actually very shortsighted and harmful to deny the right to life in a most arbitrary way. Abortion is dangerous for women and society as a whole who deserve better than a federally sanctioned abortion regime based on an attenuated constitutional basis. The situations that apparently force women to choose an abortion are much more complex than imagined, and cannot be solved by any quick fix that may be provided by offering mothers the option to abort their children. It is necessary to provide real answers to the needs women have. The long-lasting and painful consequences of abortion on generations of women need to be carefully considered by this Court more than by any other body in any branch of the U.S. government. *Amici curiae* throughout this hemisphere respectfully request the granting of *certiorari* of this momentous case.

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[9] Section I. Regarding Natural Persons. Article 17. The fetus will be considered born when it is in their favor; and to be considered a person it is sufficient to be born alive. Civil Code of the Republic of Venezuela. Gaceta Nº 2.990, in force since July the 26th, 1982.

[10] Congressional Law Nº 5476, in force since December the 21st, 1973.

CONCLUSION

For all the foregoing reasons, *amici* urge this Court to grant the petition for writ of *certiorari*.

Dated this 18th day of February, 2005.

Respectfully submitted,

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